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ABSTRACT

To date, Ohio has not developed a systematic program for ensuring equal educational opportunity. In this paper options available for state policy which would bring about such a program are considered. Information is presented about the legal premises behind desegregation. Legal alternatives to the courts, as well as legal decisions regarding racial discrimination in education, are reviewed. The present status of desegregation policy in Ohio is summarized and the roles of different state agencies are mentioned. General concerns in equal education for all the States are discussed. Some of the issues addressed are legal standards and precedents, responsibility for administration, program components, procedures for implementation, and state support for local programs. Detailed descriptions of desegregation policies in the States of Wisconsin, Illinois, and Massachusetts are presented. Finally, recommendations for a new Ohio desegregation policy are offered. (Author/GC)

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Beyond the Courts: State Policies for School Desegregation

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CITIZENS' COUNCIL RECOMMENDATIONS FOR STATE SCHOOL DESEGREGATION POLICY IN OHIO

The Ohio state constitution requires that the state establish and maintain public schools. Ohio also has an obligation to ensure that schools meet the standards of equal protection set forth in the United States Constitution.

The Citizens' Council for Ohio Schools has three recommendations for state policy which it feels will help Ohio meet those standards and the goals of equal educational opportunity:

1. Ohio should share with local school districts the cost of court-ordered desegregation.
2. Ohio should provide financial incentives for school districts that are voluntarily considering or providing integrative programs; incentives should be for between district as well as within district programs.
3. Ohio should establish a comprehensive monitoring program in the State Department of Education to investigate and promote remedies to racial isolation.

These recommendations are consistent with state and federal law, and for the most part require extensions of current policies. All three are essential if Ohio is to take a positive role in pursuit of equal educational opportunities for all Ohio youth.

Because districts now under court order to desegregate are in serious financial trouble, local funds will not be sufficient to accomplish desegregation. An expansion of the already well established state cooperation in school finance will be needed.

In 1968, the State Board of Education adopted a policy to promote equal educational opportunity. This policy recommended certain local actions but neither mandated specific action nor provided financial incentives. The goals of the policy can be served by encouraging school districts, through various state provided incentives, to reduce or prevent racial isolation.

Two District Courts have ruled that it is the state's responsibility to detect and remedy conditions of racial isolation in Ohio schools. If those rulings are upheld, effective state procedures to monitor segregative actions in school districts will be required by law. Even if not required by courts, state monitoring will provide a more flexible, direct, and less expensive approach than litigation for ensuring equal educational opportunity. This may prevent future lawsuits.

By establishing concrete programs in each of these suggested areas, Ohio will provide its public schools with a solid foundation from which they may be more able to remedy past discrimination, avoid future litigation, and provide equal educational opportunity.

INTRODUCTION

Public officials may not intentionally segregate pupils in the public schools. To do so, according to the Supreme Court, is a violation of the United States Constitution.

Five of Ohio's large city school districts, Columbus, Cleveland, Cincinnati, Dayton, and Youngstown have already been involved in federal court cases because of alleged constitutional violations. A suit was filed in Akron in January, 1978. Several other school systems are presently under attack for, or negotiating plans to remedy their non-compliance with the Civil Rights Act of 1964. In the Cleveland and Columbus cases, the State, in addition to the local district, was found liable because it did nothing to prevent or to correct segregation in those local districts.

How is Ohio to respond to the increasingly urgent challenge to guarantee equal educational opportunity to all Ohio public school students?

Some states have tried to promote desegregation[1] and prevent lawsuits through state policy. They have developed comprehensive programs to force and/or to entice local school districts to comply with standards intended to eliminate racial isolation. Where courts have ordered desegregation remedies, some states have developed specific programs or procedures to enable local school districts to meet the requirements of those remedies. Some have written policies which suggest positive approaches, but have failed to enforce the policies. Others have done nothing except what is required of them by the federal government through court action.

To date, Ohio has not developed a systematic program for ensuring and enabling equal educational opportunity. Increasing pressure from legal proceedings—new and old—means that the state no longer can choose whether or not to become involved in school desegregation. The only choice is among actions to alleviate the extra burdens that have been imposed on local districts as they meet their legal obligations, to prevent additional court challenges, and to ensure that Ohio schools do in fact provide equal educational opportunities.

This paper considers options available for Ohio state policy. It presents information about the legal premises behind desegregation, a summary of the present status of desegregation policy in Ohio, and an overview of school desegregation policies in other states. Detailed descriptions are presented of such policies in Wisconsin, Illinois, and Massachusetts. Finally, recommendations for a new Ohio desegregation policy are presented.

THE LEGAL BACKGROUND

The Law of the Land

The Fourteenth Amendment to the U. S. Constitution says "no state . . . shall deny . . . the equal protection of the laws." Since 1954, the Supreme Court has consistently interpreted equal protection to mean that the state may not segregate children in the schools. Segregation by the state (often called de jure segregation) does not simply mean state or local laws that say that blacks and whites must go to separate schools. For instance, even though Ohio abolished racial segregation in public schools in 1887, federal courts have found constitutional violations in Dayton, Columbus, and Cleveland.[2] "State imposed segregation," in these cases, as in many throughout the country, means official policies, actions, or inactions by state and local school board officials that have the intent and effect of creating or perpetuating segregated schools.

A person or class of persons may bring suit in a court in order to determine whether a school district or a state board of education is violating the Constitution. If the court finds a violation of the equal protection rights of the class of children who brought the suit, then the court will order a remedy which is designed as nearly as possible to restore the children to the position they would have been in if they had not been discriminated against. While the court orders what remedy will take effect, it generally requires the bodies who are responsible for the discrimination to propose a remedial plan. In *Green v. New Kent County*, the Supreme Court made it clear that the school board's duty is to "come forward with a plan that promises realistically to work and promises realistically to work now."

The court must order a remedy that fits the violation. In the recent Dayton case, *Dayton Board of Education v. Brinkman*, the Supreme Court made clear that if official intentional segregative actions were found to have caused only part of the segregation in a high school district, then the remedy must be tailored to deal with only that unconstitutional aspect of the segregation. Similarly, if the court finds that one school district discriminated, it may not include other school districts in its remedial plan unless they have also discriminated; this was decided in 1974 in the Detroit case *Milliken v. Bradley I*. The components of a remedy may vary with the particular situation. The court may order reassignment of pupils and staff; it may also order remedial education programs, as it did in Detroit in *Milliken vs. Bradley II*. Also where the state and the local boards of education were found responsible for the discrimination, the court ordered the state as well as the local Detroit board of education to pay the costs of the remedy.

In addition to cases being brought by classes of indivi-

[1] While many authors wish to make distinctions among desegregation, integration, and racial balance, they are used as synonyms in this paper. Likewise segregation, racial imbalance, and racial isolation are used as synonyms.

[2] A new District Court opinion in Dayton finding no violations is now on appeal to the Sixth Circuit.

duals because of violations of the Constitution, the federal government may also initiate action against school districts, under the Civil Rights Act of 1964. Under the Act, federal assistance may be cut off if a school board fails to establish and implement a plan to correct discrimination.

While the Supreme Court continues to elaborate on various requirements of school equal protection violations, the basic law is relatively clear. No public official at the federal, state, or local level may intentionally discriminate on the basis of race in the public schools; officials' actions or their inactions may cause the discrimination which violates the Constitution. If a court finds that officials have violated the law, it will order the violators to propose and implement a plan which will realistically and immediately remedy the situation they created. Thus, the federal law provides the basic standards for equal educational opportunity.

Legal Alternatives to the Court

The courts are not the ideal institution to establish or enforce educational policies and programs; and the courtroom is not the only place where school responsibilities to pupils can be established. Although most of the legal standards of school integration come out of lawsuits, once the standards are known the states ought to assume their primary responsibility for educational leadership.

The effects of a lawsuit may be devastating. Court actions are time consuming and tremendously expensive.The adversary structure of a lawsuit makes the two sides take extremely contrary positions. Although both sides in a suit generally recognize that segregation in some form is present in a school system, the attaching of blame to the school district makes the school administrators reluctant to work with their accusers, to find appropriate solutions to the recognized problem.

In addition, when the courts find unconstitutional segregation, they order a remedy to the harm that the school officials have caused. Even though the courts require those who are legally responsible for the harm to develop the remedial plan, the courts are compelling the schools to do things they would not otherwise do. The initiative is taken away from the public bodies that have primary responsibility for education—the states and the local school districts.

Courts have a limited ability to provide solutions. A court may only consider the limited factors which are presented to it in the lawsuit. The fact that court remedies are limited to undoing the effects of de jure segregation means that they may not always order comprehensive plans which include education components. By focusing on one aspect of the education process—discrimination—the court remedies cannot always take into account the relationship between education and other social factors.

Finally, the fact that the courts may only deal with school systems that have been brought before a court as alleged constitutional violators means that the courts are limited in the extent that they may order metropolitan remedies. This is serious in cases where it is obvious that the segregation in one system may only be corrected well by expanding desegregation beyond the particular school district.

While the courts are not the ideal public institution to deal with school segregation, they are the best institution available if the public education system has defaulted in its responsibilities to students. Through new state law, many states are retaking the initiative in ensuring equal educational opportunity.

OHIO—PRESENT STATUS

The State of Ohio has a constitutionally mandated duty to establish and maintain a system of public schools. The Ohio system is organized into local school districts, each of which is governed by its own board of education. Overall control of the system is held by the Ohio General Assembly which appropriates state funds for education. Local districts presently provide about one half of the operating funds for schools while the state pays for about 42 percent of the costs and the federal government provides the remaining eight percent.

A State Board of Education, composed of elected members from each Ohio congressional district, supervises the state system. Its administrative arm is the State Department of Education, which is headed by the board-appointed Superintendent of Public Instruction. By statute, the primary powers and responsibilities of the State Board are:

1. to formulate policy, plan, and evaluate the public schools;
2. "to exercise leadership in the improvement of public education in Ohio" and to administer the state's educational policies;
3. to administer and supervise the distribution of state and federal funds for public education; and
4. to establish minimum standards for a general education of high quality, to apply to all elementary and secondary schools in the state.

The State Board is required to revoke a school district's charter if it fails to meet the Board's minimum education standards; until the state charter is restored the school district may not receive school foundation funds from the state.

State law also requires the state to withdraw its funds from local districts which violate the law. According to the statutes:

> "A board of education which has not conformed with the law and the rules pursuant thereto, shall not participate in the distribution of funds . . ., except for good and sufficient reasons . . ."

In 1956 the State Attorney General interpreted this statute to mean that "the law" included the equal protection provision of the Fourteenth Amendment to the Constitution. According to the Attorney General's opinion, the State Board has responsibility to determine if school boards are conforming with the law, and, if they are operating an unconstitutionally segregated system, to cut off funding. The State Board has been found responsible for the constitutional violations in Cleveland and Columbus because of its failure to

carry out its obligation as interpreted by the Attorney General.

In 1968, the State Board of Education further established the state's responsibility for equal educational opportunity. It issued a policy statement that called for the state to be aware of and eliminate de facto pupil segregation and employment bias, to include positive ethnic recognition in curriculum for pupils and in teacher education, and to continue to cooperate with other official bodies to bring about integrated quality education.

This policy statement has had limited effect. It was not a mandate but a recommendation to local school boards. In addition, the state did not set standards of integration to which local school districts must conform, nor did it provide financial incentives for desegregation.

The Ohio Civil Rights Commission is another state agency which affects integration in education. It has responsibility to enforce equal employment opportunity in the schools and elsewhere. This is important in view of the segregation of staff that often accompanies segregation of students. The Commission, in cooperation with the State Department of Education, also has responsibility for the preparation of an educational program for public school students designed to reduce prejudice and further good will among students of various races, colors, religions, sexes, national origins, handicaps, or ancestries.

At the present time, various school districts and the State Board of Education are involved in court actions to determine liability for segregation of school districts throughout the state. In Cleveland and Columbus, the local and state boards have been found legally responsible for segregation, and remedial plans are being developed and put into effect, while appeals of the findings and rulings are pending. In Dayton, the Supreme Court sent the case back for the District Court to reconsider its findings. Although the District Court has reconsidered and found no constitutional violations, the system-wide desegregation plan remains in effect. Additional appeals are anticipated. In Youngstown, a trial has been completed but the court has not yet announced its decision. Trials have not yet begun in Cincinnati and Akron. Additionally, the U.S. Office of Civil Rights is working with several other cities, including Springfield, Lima, and Toledo, to bring them into compliance with the Civil Rights Act of 1964.

In other districts across the state various kinds of voluntary integration plans are being considered and implemented. Much of this voluntary activity is probably occurring for mixed reasons: to provide an integrated educational experience and to prevent lawsuits from occurring.

WHAT OTHER STATES ARE DOING

States have reacted with a wide range of laws, policies, and/or programs to the challenges of desegregation. These responses usually have at least one of three purposes: remedial, preventive, or educational. Remedial efforts are generally directed to local school districts which are under pressure of a court order. State assistance is provided to alleviate to some extent, the burdens of court-imposed remedies. Preventive efforts are designed to help school systems avoid desegregation lawsuits by ensuring that all school districts meet constitutional standards for non-segregation. Since courts are holding state boards of education, as well as local boards liable for segregation, states are eager to avoid court suits within their boundaries. Finally, a state, using its power and authority to set educational standards, may develop and institute programs to ensure equal educational opportunity because it sees integration as a vital element in the education of all children.

These three purposes for state integration programs are not mutually exclusive nor incompatible in the development of programs. The strictly remedial purpose is limited in scope, and the activities flowing from it may be expected to end when the court order that necessitates it is no longer in effect. The preventive purpose is based on the reality or threat of lawsuits, but it tends to promote activities that are more extensive than the first. A state may develop a program that meets all three purposes.

Some perspective on what Ohio could do to ensure equal education opportunity can be gained by reviewing efforts in different states. The Citizens' Council surveyed all states regarding their desegregation policies; about two-thirds of the forty states that responded reported having specific policies. The following analysis will describe specific policies employed in those states. Special emphasis is given to the statutes, policies, and practices in Illinois, Massachusetts, and Wisconsin.

The information in this report comes primarily from printed material and responses to written questions provided by each of the responding states. This information was supplemented by additional materials and conversations with people knowledgeable about activities in various states. It is important to note that this report does not deal with federal programs, except as they relate to state activities.

The Legal Basis

All states have recognized that they cannot constitutionally segregate school children according to race. Not all states, however, have acted on this knowledge with equal force, commitment, or effectiveness.

A number of states have constitutions or statutes which prohibit segregation of or discrimination against school children because of race. Many of these states make their laws meaningful by also providing comprehensive programs to promote integration or at least to discourage segregation. In other states the commitment does not go beyond the statement of law; they do not provide the mechanisms to establish programs to promote desegregation or integration. States also have laws that set out the powers and responsibilities of the state board of education. These powers and responsibilities may be interpreted to include responsibilities for enforcement of integration, but again they may provide little framework on which a program may be built.

Some states have no laws or policies for or against school integration or segregation. In some of these instances such laws have not been deemed necessary in view of a history of lack of segregation or a small minority population. Other states have none because their history is the opposite: their segregative laws have become unenforceable, and the political climate does not encourage more positive approaches to desegregation. Mississippi for instance, has no laws or policies. All school districts in Mississippi are either under federal court order to desegregate or are operating under desegregation plans acceptable to the U.S. Office of Civil Rights. Mississippi's school policies in respect to desegregation are, in effect, set by the federal government rather than the state.

Most states, with or without specific legislation regarding segregation, have state board of education policies, guidelines, and/or procedures regarding segregation. These policies often have the effect of enacted laws. However, policy statements like laws, are not sufficient in themselves unless there is some mechanism for implementation. In some states the board policies appear to be the only way to get any program started, since legislatures may be unwilling to touch the hot political issues involved.

The Legal Standards

Segregation

Statutes and board directives establish the basic authority for state intervention in school segregation and specify the practices and classes of people to whom state programs apply. About twenty states provide a specific numerical measure of when a school is segregated. States without specific numerical measures usually lack active enforcement programs. States with active enforcement programs tend to have both numerical standards for racial integration and general policy statements about non-discrimination and equal educational opportunity.

Many programs make no distinction between **de facto** and **de jure** segregation. They set standards and address segregation whether it was caused or perpetuated by the schools or by other factors. In these cases all school districts are target districts. This seems to be good strategy for two reasons. First, it is easier to administer a program and to enforce standards based on numbers and percentages than to become involved in establishing responsibility for any segregative pattern that may exist. Second, using a set measure of segregation is a better way to prevent lawsuits, particularly if the measure approximates the standards the federal law uses.

Most states with definite standards, indicate that a school district does not meet its standards for racial integration when the percentage of minority students in individual schools varies more than a certain percentage above or below the overall percentage of the total district in which the schools are located. The allowable divergence varies by state. For example, according to recently approved Michigan Board of Education guidelines, if "the percentage of student enrollment in any individual racial category for any one building varies more than 15 percent above or below the student population for that racial category in the district as a whole," the school is racially isolated. In Iowa, minority enrollment in individual schools may not vary by more than twenty percent above the percentage of minority group children enrolled in all the schools of the district. Policy in Rhode Island defines segregation/racial imbalance as "a public school whose percentage of racial minorities deviates by 10 percent from the racial composition of the public schools of that district; also, if the district has between five and ten percent racial minorities in its public schools, a school having fewer than two percent racial minorities." The second measure in the Rhode Island definition prevents all minority students in a school district from being assigned to certain schools, with the other schools in the system remaining all white.

A few states, including some with aggressive records of enforcement like Pennsylvania and Massachusetts, consider that racial imbalance is found only when a school district has a school that is at least 50 percent minority (35 percent in Minnesota). While this definition does not appear to mesh well with federal standards, a set percentage in a school building is easier to administer than the percentage that relates back to the racial composition of the school district as a whole. However, it would generally not be as inclusive of what the courts might find to be segregation as the variable percentage standard.

In Oregon, there are two important standards, one for "racial isolation," and a second for "substantial racial minority student enrollment." If there is racial isolation the school district has an affirmative duty to **eliminate** that isolation. In the case of substantial racial minority enrollment the district has the affirmative duty to formulate policy and implement educationally sound and feasible programs to **prevent** racial isolation. The measure for the existence of racial isolation in a district is: "if the combined enrollment of Black, Native American, Mexican-American, and Asian-American students in any school of the district is in excess of fifty percent of the school's enrollment." The measure of a school district with a "substantial racial minority student enrollment" is the same as the 50 percent measure for racial isolation and also occurs when "five percent (5%) or more of the total student enrollment in all schools of the district are either Black, Native American, Mexican-American, or Asian-American students."

Michigan also considers the racial composition of the faculty in individual schools as compared to the entire district, when it determines whether racial isolation exists. Iowa specifies the need for a racially representative faculty and a responsive learning environment. Other states encourage affirmative action in hiring minority personnel.

Minorities

State defined racial categories usually include Black, Spanish, Native American, Oriental, and White. All except White are generally considered minorities. In Maine, Franco-Americans have special minority status for some purposes and New Hampshire is attempting to get Franco-Americans recognized as a minority for the purpose of securing federal special education funds. Some states combine all minorities for the purposes of finding racial segregation and others consider each minority group individually for the triggering percentages. That divergence may relate to the degree of presence of a number of population groups in an individual state.

Some states are concerned about economic as well as

racial integration in schools. Colorado, for example, requires reports on the distribution of students throughout each school district by both racial and economic characteristics.

Responsibility for Administration

In most states equal educational opportunity programs are administered through the state department of education. Many of these education departments have offices of equal educational opportunity or the equivalent, and administer state and federal programs. They distribute funds from both sources, as well as ensure compliance with both state and federal requirements.

Idaho and a few other states' programs are administered through the department of education as long as there is voluntary compliance with the program requirements. If local districts do not comply with the department's directives, they may be referred to other agencies for enforcement. These other agencies are generally state and/or federal offices of civil rights or their equivalent. In Pennsylvania, the Department of Education and the Human Relations Commission work cooperatively throughout the compliance procedure.

Program Components

The specific elements included in equal educational opportunity programs vary considerably among states. Generally, however, any state program includes one or more of the following components.

Pupil Transfer Programs

States encourage local school districts to reassign pupils to enhance racial balance if individual buildings in local districts do not meet the standards for integration. Generally, the state provides transportation support for these changes and in some cases, other financial incentives.

A number of techniques common to court-ordered desegregation remedies are used to reassign students. School districts may redraw attendance district lines, pair or group schools, encourage voluntary transfers, establish magnet schools, or develop any other techniques that work. States stress different techniques, depending upon whether the reassignment standards are voluntary goals or goals that require compliance.

While the Supreme Court in *Milliken v. Bradley I* limited court ordered inter-district remedies, states have the power, within the limits of their own laws, to order or entice inter-district pupil transfers. Most states, however, only transfer students within local school districts. In those few states with metropolitan inter-district programs, participation is voluntary; transfers are predominantly one-way—minorities out of the cities into the suburbs; and financial incentives are frequently offered for transfers. The state support for transfers between districts tends to be small in comparison to the total support states provide for transfer programs within single districts.

Personnel Non-discrimination or Affirmative Action

School districts control the assignment of personnel to various positions and to various locations, and are expected to assign personnel in a fair and non-discriminatory way. Many states monitor the proportionality of minority personnel and their distribution within the district. In order to provide sufficient role models and a staff representative of the pupil population, states often encourage or require affirmative action hiring programs.

Multicultural Curriculum

Almost all states with any kind of integration enforcement program have a multicultural curriculum component. Many states provide curriculum recommendations for an integrated atmosphere, or guides to promote multi-cultural understanding and respect. In some states where concentrations of minorities do not present problems of racial imbalance in particular schools, the state requires curriculum to encourage positive multi-cultural respect.

Teacher Training

Most state education departments recommend or require components to promote teacher appreciation of racial and cultural diversity, and to help teachers develop positive ways to work with pupils from diverse backgrounds. In-service training is provided to those already working in local school districts, while the curriculum in teacher training institutions is often modified to serve these purposes.

Citizen Advisory Councils

Whenever local school districts plan and actually carry out the reassignment of pupils, involvement of citizens has been considered important. Citizen advisory councils provide helpful feedback to local school boards about the feelings of the community. They also educate the community about the programs being planned and implemented. Several states have established fairly formal guidelines for establishing and involving such councils in the integration process.

Procedures for Implementation

State programs for equal educational opportunity establish guidelines against which an actual plan and its effects may be judged. No states make the plans for local districts. Rather, local school boards and their administrators have responsibility for deciding what their school districts will do and for implementing those programs.

Of course, local school board decisions are influenced by state board of education policy and the incentives provided by the state education department to encourage and/or enforce that policy. If state funding for education may be cut off if a local district does not meet certain standards, the district will generally do what it can to meet those standards. Similarly, if extra funds are available to a district for reassigning pupils to improve racial balance, the local district may be more likely to consider a transfer program.

States also provide continuous feedback to local districts throughout their planning and implementation processes. The state will often provide technical assistance and review local plans. In most programs the state begins the process by setting standards and requiring regular reports from the local school boards. The state reviews the local reports for compliance with state standards. If the local district complies, the state generally will not be further involved with the local except to review periodic status reports. In a few states, however, local school districts have a continuing affirmative obligation to plan, and to make sure that they remain in compliance with the state laws.

When a local school district does not meet state standards for equal educational opportunity, a continuing rela-

tionship develops between the state and the local district. The state indicates in what ways the local is lacking and the needed revisions to gain state approval, and sets a deadline for amendments. The local then develops the specific proposals that meet the state requirements, generally with the assistance of citizen advisory councils. If those proposals are not acceptable, the state will again point out deficiencies and return the plan to the local to correct. When the local and state agree to a plan, the local will put it into effect, often with the assistance of citizen groups. The state will continually monitor the local school district to see that it meets the original state standards. At any point in the process, the state may offer or the local may request technical assistance. Some states may also provide additional money to pay for part of the costs.

If a local school district does not meet the state's step-by-step requirements, at some point the state will take one of several actions. The three general state responses to a non-cooperating local school district are: 1) to withhold state school aid; 2) to notify the state board of education and/or the state legislature, so that they may decide whether to take further action; and/or 3) to notify the state and/or federal office of civil rights, so that those departments may begin a compliance review, which might lead to withholding federal or state funds and/or court action. What the state department of education will actually do depends upon its authority from the state and what it considers will be most effective in the particular circumstances.

State Support for Local Programs

Most state departments of education will at least provide technical expertise to any local school district that decides to desegregate, either totally voluntarily or with state urging. The state may offer or the local school board may request technical assistance to develop any of the components of the desegregation plan.

In addition, a few states provide financial assistance in varying degrees and for varying functions. State assistance is provided to cover the costs of transporting children (under either a court-ordered or a voluntary plan), or other costs that are incurred by desegregation. In some cases, states will provide financial rewards per child transferred to improve racial balance.

Local school districts may also request assistance from the federal government in the form of technical assistance and financial support. This may be requested whether or not the local school district also has state assistance of various kinds.

Case Studies

None of the state plans have all of the factors described in the composite picture of state programs. A more detailed description of three specific state plans—Wisconsin, Illinois, and Massachusetts—gives a more realistic picture of how various states have developed integration plans.

Each state uses different means for promoting desegregation. Wisconsin uses only financial incentives. Illinois has only the threat of withdrawal of school funds. Massachusetts combines incentives and the threat of withdrawal of funds. One common threat that influences the efforts in these three states is the possibility of court suits if local districts do not work to achieve acceptable racial balance in their schools. Both Massachusetts and Wisconsin have major cities under court ordered desegregation. Both of these states have responded by providing assistance to local school districts to meet court guidelines. For example, both states provide financial incentives for transfers that further integration, whether between districts or within districts. Illinois, on the other hand, has no cities under court order (Springfield has a consent decree) and is working hard to maintain that status. Illinois has not developed ways to promote metropolitan desegregation; nor does it provide additional state aid for pupil transfers or magnet programs.

Wisconsin

The State of Wisconsin's major provision for school integration is a purely voluntary pupil reassignment program. Chapter 220, adopted by the Wisconsin Legislature in the Spring of 1976, promotes the voluntary transfer of pupils between schools and between school districts. It financially rewards school districts that endorse a program in which their pupils transfer to promote cultural and racial integration. The statute applies to all school districts in Wisconsin.

This legislation was passed during the period when the federal district court found the Milwaukee school officials responsible for the segregation in their schools and ordered the Milwaukee school administration to develop a remedial plan. Chapter 220 was not the original form of legislation developed to address desegregation in Milwaukee. Initially a bill was proposed which would have merged portions of the Milwaukee school district with two suburban districts; the bill included aid incentives as well as specific details for developing integration throughout the school buildings involved. Racine, Wisconsin, set a precedent for this type of action in 1961 when it merged Racine with all the surrounding school districts and then established a 100 square mile district-wide voluntary integration plan. The Milwaukee merger plan was conceived as a pilot project to determine the feasibility of more complete metropolitanization of the school districts of Milwaukee and the surrounding suburbs. The bill was withdrawn after opposition was apparent, and Chapter 220 was substituted as a compromise.

These are the specifics of Chapter 220. A district receives a bonus of 20 percent of the established per pupil state aid for each student transferred within the district to enhance integration. The school district of residence retains the normal state aid for the pupil while the school district of attendance gains state aid for each student transferred from one school district to another to promote integration. If the school district of attendance educates in-transfer pupils equal to or exceeding five percent of its resident pupils, that district receives an additional 20 percent bonus of state aid for each incoming pupil. Chapter 220 also authorizes the state to pay transportation costs for intradistrict and interdistrict student transfers that enhance integration.

A transfer enhances integration and therefore brings state aid to a district when a minority group pupil whose regular school has more than 30 percent minority group pupils transfers to another building within the school district that has fewer than 30 percent minority group pupils. The district also receives funds when a non-minority (white) pupil transfers from a school with fewer than 30 percent minorities to a school with more than 30 percent minorities. The definition of minority group students is similar to most

state definitions: Black American, Native American, Spanish-surnamed American, or Oriental American.

The set 30 percent standard is not equally effective throughout the state. For instance, in Milwaukee the percentage of minorities in the entire school district is approaching 50 percent. The equalization of the percentages in schools above 30 percent minority depends on transfers in of whites. Less state support is available in this instance than in the trade-off situation where a white and a minority pupil trade places in schools and the school district benefits from both transfers. Perhaps when the share of minorities in a school system is close to 50 percent the purpose of the 30 percent standard is to encourage more transfers between the city and suburban schools. If the assumption is true, the available incentives have not yet provided the desired result of increased metropolitanization of schooling in the Milwaukee area; no more than five percent of the pupil transfers in the Milwaukee system during the 1976-77 school year were across school district lines.

In other Wisconsin school districts where the overall percentage of minority students in a district is relatively low, the 30 percent minority limit for a school may be too high to effectively promote integration. All minorities might be assigned to one or two schools, yet no schools would have more than 30 percent minority pupils. There is no state incentive for transfers of pupils in these instances, despite considerable racial imbalance. This argument is true of any set percentage standard; of course, a counter-argument is the ease of administration that a definite percentage provides.

The law also provides for planning councils as the vehicle by which adjacent school districts establish and fulfill transfer contracts. The planning council membership includes board members and the school board administrator of each district, and a public member from each district.

The Wisconsin program has been on the books for two years. In the first year of operation close to five million dollars were spent under its provisions. The greatest percentage of that amount went to Milwaukee, as it entered the first phase of a three year desegregation plan approved by the court. Milwaukee was able to meet its goal of desegregating one third of its school population by purely voluntary transfers within the city school district; 10,500 pupils transferred within the district. In addition, 330 minority students transferred to eight suburban school districts. Racine and a number of other school districts, particularly those in the northern part of the state with relatively large Native American populations, also received money available under the provisions of Chapter 220.

For the 1977-78 school year 10.5 million dollars have been appropriated for use under Chapter 220. Probably less than one million dollars will go to districts other than Milwaukee. To meet the second phase of the Milwaukee desegregation plan 14,500 students are changing schools; only 1,000 of those pupils are being assigned involuntarily. Ninety-eight percent of the students who made a choice of schools got their first, second, or third choice. However, of those who are being transferred, 87.6 percent are black. This disproportionate impact is at least partly because Milwaukee, as part of its court-approved desegregation plan, has closed a number of identifiably black schools. The result is that more blacks than whites are forced to transfer even in a "voluntary" situation.

For the inter-district incentive program between Milwaukee and its suburbs, almost 800 minority students are transferring into 12 suburban school districts and approximately 40 students are transferring into Milwaukee from other districts. Because Wisconsin has an equalization formula for state aid, the only state aid some of the wealthier suburban districts are receiving may be from the Chapter 220 student transfer incentives.

Illinois

In contrast to Wisconsin, Illinois has legal standards for integration that all school districts are required to meet. There are no special financial incentives for desegregation; but those school districts which do not conform to the standards and do not comply with the state board of education steps to bring them into conformance, may become ineligible for state funds. State dollars pay for an average of 52 percent of the local school districts' expenses in Illinois. While it is true that no desegregation litigation has originated in Illinois since it began strict enforcement of its own legal standards, the state and its local school districts are aware of the possibility of litigation if the state's efforts fail to ensure integration.

The Armstrong Act, which requires school integration in Illinois, has only recently been strenuously enforced. In 1975, a change in the Illinois constitution resulted in the appointment rather than election of the state board of education and the state superintendent of education. The newly appointed state board established desegregation as its highest priority and has consistently maintained that focus. In 1975, more than 40 school districts in Illinois were not in conformance with the law; today, fewer than 10 do not conform. To date, the state board and state department of education have not found it necessary to withhold funds or go to court in order to gain compliance with the standards.

"Rules Prescribed by the State Board of Education Establishing Requirements and Procedures for the Elimination and Prevention of Racial Segregation in Schools" were promulgated and became effective in February, 1976. These rules have the effect of law; they are being vigorously and flexibly administered by the state department of education in order to achieve desegregation in all Illinois school districts.

According to the rules, racial segregation exists in schools in either or both of two situations. First, if composition of pupils in any school fails to reflect, within 15 percentage points, the minority racial composition of the pupils in the entire school district. Schools are also in non-conformance when the minority racial composition of personnel in any school fails to substantially reflect the minority racial composition of personnel in the entire school district. Minorities under Illinois law are the same groups with different labels as those in Wisconsin: Black non-Hispanic, Hispanic, Native American, and Asian. For the purpose of determining conformance with Illinois standards, minorities in a school are identified as a single group which includes all minority racial categories.

The state supervision procedures are consistent with the composite procedures described earlier. The department reviews regular district reports to determine segregation or non-segregation according to state standards. If school dis-

tricts conform to the standards, they may continue as they have. If there are school districts that do not conform, the state superintendent requires submission of a comprehensive plan to correct the deficiencies. In preparation of a plan, the local school board must communicate with the citizens of the community. If the school board requests information and advisory technical assistance, the Illinois Office of Education will furnish appropriate help.

Plans for reaching the standards must include: the local school board's definite commitment to meet the Illinois requirements, a detailed description of specific proposed actions, and a timetable for implementation. The state's review of acceptability is based on the effectiveness of the plan to desegregate. If the plan is not acceptable, the local district may revise it, drawing on technical assistance from the state.

If a local school board cannot or does not comply with the state requirements, it will receive the status of probationary recognition. If the deficiencies are not removed within a year, the school district will receive the status of no recognition and funds normally allotted to the district will be withheld. In addition, the state superintendent may request a court to enforce the requirements. While time requirements are in the rules, the state department has flexibility in adapting them to special circumstances.

Components of desegregation plans must result in actual desegregation of pupils and personnel. All methods of eliminating and preventing racial segregation are to be considered. Voluntary or optional plans are acceptable as long as they actually result in the established goal. According to the rules, all plans must "include specific proposals to insure that the desegregation process provides an effective learning environment for all children based upon mutual cultural and personal respect among all racial groups."

A bill to provide financial assistance to desegregating school districts was introduced in the Illinois legislature, but it was not passed in 1977. If Illinois could provide financial assistance for integration it would have two effects. First, it would provide the local school districts with more options in planning for school integration; they might choose more educationally sound methods that may also be more expensive. Second, funding of additional costs of desegregation might include some incentives to interdistrict desegregation. At the present time without funding, there are financial disincentives to inter-district pupil transfers.

Massachusetts

The status of the law in Massachusetts is not as clear as in Wisconsin and Illinois. In 1965, the Massachusetts legislature passed the Racial Imbalance Act that made it illegal for any single school in the state to have more than 50 percent non-white pupils. The act required that the plan for balancing schools must come from the communities involved. As a result of the state board of education's enforcement of that law, no school is more than 50 percent minority, except for certain exceptions allowed by the federal court in Boston.

A 1974 amendment to that Act removed the state board of education's authority to order redistricting and pupil reassignment. However, the amendment allows the board to provide funding to encourage voluntary transfers and to strengthen educational programs in desegregating schools. In November, 1974, the Massachusetts Supreme Judicial Court ruled that any attempt by the legislative or the Springfield school committee "to reverse or impede the progress toward the achievement of racial balance" would be unconstitutional. The State Board of Education still uses the amendment as a tool to provide more choice in the techniques used to integrate and to strengthen the schools desegregated under court order.

In the Massachusetts legislation the term "non-white" is not defined and it has not been clarified, although in practice it has tended to include the four racial classifications generally included in definitions of minorities. The standard for racial imbalance is a set 50 percent. If a district reports a majority non-white school in its annual fall census, the Department of Education notifies the district of its obligation to promote voluntary transfers and offers technical assistance. The education department also offers assistance to districts with schools which are approaching the critical 50 percent level.

The major program emphasis is on developing voluntary desegregation through magnet schools, magnet programs, and metropolitan transfers. Massachusetts' definition of magnet school is "a public school which is racially balanced (30 to 50 percent non-white) because its innovative programs and activities attract on a voluntary basis white students, non-white students, or both." A magnet educational program is "an educational collaboration among two or more schools which are significantly different in the racial/ethnic make-up of their student bodies." One of the purposes of the program must be to bring together minority and white pupils who attend essentially racially isolated schools. The magnet programs are part-time integrative experiences.

The magnet programs and schools often are coordinated with other institutions in the community. For instance, cultural institutions may be employed as the site of the magnet program. Institutions of higher learning work with individual schools to develop unique curricula and resources. The use of magnet schools is closely monitored so that discrimination, such as may occur with tracking of students, does not creep into the program.

Magnet schools have acquired an aura of prestige that leads to voluntary transfers from traditional neighborhood schools. Desegregation occurs without the element of coercion that attaches to reassignment of pupils only for racial balance. For example, in Boston, which is operating under a court-ordered desegregation remedy, the number of mandatory assignments has been reduced as pupils request transfers to magnet schools. In fact, there are not enough magnet schools in Massachusetts to meet the state-wide demand, despite an expansion program which adds four new magnets a year.

The state provides funding for the magnet schools and magnet programs by adding one hundred dollars per pupil to the basic funding for these schools. In addition, the state pays 75 percent of the cost of school construction for schools that enhance integration; in other words, for magnet schools or schools constructed on a neutral location.

The ten year-old metropolitan transfer program is one of the oldest across school district transfer programs in the country. Presently about 3,100 minority students regularly attend schools in suburban school districts; all but 100 are

from the Boston school system. Forty-one towns are participating in the urban-suburban transfer program. The potential for more children to be involved in the metropolitan program is probably greater than the financial support the state legislature is now providing.

Massachusetts annually spends about six and one half million dollars for its metropolitan programs. It pays the full cost of transporting children under this program. There is no set amount of additional state aid per pupil for students transferring. However, aid is set according to the increased costs that the receiving district can verify were caused by the addition of the transferring pupils.

SUMMARY AND RECOMMENDATIONS

Ohio has a state constitutional obligation to establish and maintain public schools. It also has an obligation to ensure that the schools meet the standards of equal protection set forth in the federal Constitution. In order for Ohio to meet those standards and to meet the goals of equal educational opportunity set forth by the state in 1968, three recommendations are made. First, Ohio should share with the local school districts the cost of court-ordered desegregation. Second, Ohio should provide incentives for school districts that are voluntarily considering or providing integrative programs. Third, Ohio should establish a comprehensive monitoring program to investigate and promote remedies to racial isolation.

Shared Costs of Court-Ordered Desegregation

The state of Ohio should assist in covering the cost of court-ordered desegregation plans. The need for state assistance is obvious. Ohio school districts with some of the most acute general financial problems are being required to carry out desegregation plans immediately. The money to pay the costs of desegregation, in addition to maintaining the other components of the schools' educational programs, is not available at the local level.

The state's assumption of at least part of the cost of desegregation is consistent with the shared state-local system of finance in Ohio, in which the local district provides about one half of the funds required for operation and the state provides most of the remainder. The state's assumption of a portion of the financial responsibility does not imply that the state is admitting legal responsibility for the segregation in the local districts. The state's assistance would only continue the state-local relationship already established.

State aid to local districts for the costs of desegregation does not affect the state or district's right to appeal a trial court's finding. The court-ordered desegregation process requires that resources be available for desegregation even while the trial order is being appealed. In Dayton, for example, a desegregation plan had already been in effect for one year when the Supreme Court opinion was issued; and the plan has remained in effect while the District Court determined whether the remedy was appropriate.

Another impetus for state financial assistance for court-ordered desegregation is that courts may order state assistance for some parts of the desegregation process. In Detroit, where both the state and local school districts were found liable for the segregation, the state was ordered to pay for part of the desegregation remedy. The same thing may happen in Ohio.

The major questions for the State Board of Education and the Ohio General Assembly to consider in providing funds to districts under court order relate to the categories in which funds should be provided. The State Board recently approved new standards for transportation costs that would enable the state to pay 100 percent of the ceiling price for bus purchases in those districts under court order. Funds must be found to implement the new standards.

Other questions for state policy makers to consider are:

Should categorical funds be provided to districts under court order for education programs related to desegregation as in Massachusetts?

Should general support funds be provided to districts based on numbers of students transferred to desegregate as in Wisconsin?

Should funds be provided for other specific categories such as teacher and administrator training, educational options, citizen advisory committees, supplementary programs, student and parent preparation and the like?

How can state and federal funds be coordinated so that state money supplements existing federal resources?

Should additional funds be provided for the operation of the transportation system?

Are there existing state and federal funds which could be targeted to desegregation purposes, e.g. DPPF or Title IV of ESEA?

Incentives for Voluntary Integrative Programs

A number of Ohio school districts voluntarily are reducing racial isolation in their schools, while other districts with segregated schools have not acted. The state of Ohio should support local district efforts to reduce racial isolation and should encourage others by providing financial benefits for integrative programs both within a single school district and between school districts.

State provided incentives are one way to implement the goals expressed in the State Board of Education's 1968 policy on equal educational opportunity. More practically, an incentives program to reduce racial isolation can prevent costly lawsuits. A smaller amount of money spent voluntarily now provides better results than a larger amount spent under order of the court.

In addition, innovative approaches to integration are more likely when districts change because they decide that change is necessary, rather than because the courts find necessity. Metropolitan solutions, which may be the best long-term approach to eliminating or preventing racial isolation, are more easily tried in voluntary desegregation programs.

Several questions must be addressed in Ohio before the

exact types of incentives can be determined. Among them are such things as:

Should the state provide additional funds for pupil transfers that decrease racial isolation?

Should the state provide funds for educational programs or magnet schools that involve children from more than one district?

Should the state provide funds and/or technical assistance to improve minority hiring and assignment practices?

Should the state provide financing of desegregation planning within districts, between districts, or both?

Monitoring Racial Isolation

The State of Ohio should develop a monitoring unit to investigate and report on racial isolation in the public schools. District courts in Cleveland and Columbus have held that the state school board has the legal obligation to determine whether district school boards are conforming with the law and to cut off state funds if they are not. This means that Ohio must have a system for assessing whether school districts are unconstitutionally segregating their pupils.

In addition to the legal obligation for such a system, it is a practical way to avoid further lawsuits. Unless the state knows what is happening in terms of racial isolation in school districts throughout the state and acts to correct any possible constitutional violations, it will be drawn into more lawsuits. Effective state procedures to monitor segregation can be a more flexible, more direct, and less expensive way to ensure equal educational opportunity than the court route.

The first element for a state monitoring system is a clear, enforceable definition of segregation probably written into state standards. Several definitions are in use in other states; Ohio can select one of those or devise its own.

The second element in a state monitoring system is a well staffed administrative unit with both the authority and the responsibility to see that districts comply with the law and the standards. That unit should probably be created within the State Department of Education and be provided with adequate funds to do the work required.

The third needed element in the system is a set of well understood procedures for collecting information, analyzing it, and determinig whether districts are in compliance with the law and the standards. Some pattern of procedures similar to the one outlined in this report is probably necessary.

The fourth element required for an effective monitoring system is an enforcement procedure. It must be clear to local districts and to minority children whose rights are at stake that the state is serious about compliance and will enforce the law and the standards. State support for integrative programs would hopefully prevent the need for negative sanctions. However, a series of sanctions of increasing severity including termination of all state funds must be available to make the monitoring system effective.

By establishing concrete programs in each of these suggested areas Ohio will provide its public schools with a solid foundation from which they may be more able to remedy past discrimination, prevent future lawsuits, and provide equal educational opportunities for Ohio youth.

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